

William Harrington
356 Windham Avenue
Colchester, CT 06415

**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

State of Connecticut
Department of Public Health

vs.

William Harrington, LPN
Licensed Practical Nurse License No. 025942
respondent.

CASE PETITION NO. 990107-011-003

MEMORANDUM OF DECISION

Procedural Background

The Board of Examiners for Nursing (hereinafter "the Board") was presented by the Department of Public Health (hereinafter "the Department") with an Interim Consent Order (Dept. Exh. 5) executed by William Harrington, LPN (hereinafter "respondent") and the Department. The Interim Consent Order provided for the Licensed Practical Nurse license of respondent to be suspended until May 19, 1999, pending a resolution of allegations by the Department that respondent engaged in conduct which failed to conform to the accepted standards of the nursing profession. The Interim Consent Order was accepted by the Board on February 17, 1999.

The Board was presented by the Department with a second Interim Consent Order, which it accepted on June 2, 1999, that provided for an extension of the suspension of the Licensed Practical Nurse license of respondent until the Board issued a final Order in this matter. (Dept. Exh. 6)

On June 2, 1999, the Department presented to the Board a Statement of Charges. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by respondent.

The Board issued a Notice of Hearing dated June 4, 1999, scheduling a hearing for August 18, 1999. (Dept. Exh. 2)

Respondent was provided notice of the hearing and charges against him. Department Exhibits 3 and 4 indicate that the Notice of Hearing and Statement of Charges were delivered by certified mail to respondent and respondent's attorney.

The hearing took place on August 18, 1999, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing and was represented by counsel. (Transcript, August 18, 1999, p. 2)

During the hearing, respondent verbally answered the Statement of Charges. (Transcript, August 18, 1999, p. 9)

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

Findings of Fact

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Respondent was issued licensed practical nurse No. 025942 on August 4, 1995. Respondent was the holder of said license at all times referenced in the Statement of Charges. (Board Exh. 1)
2. During 1995, respondent began employment as a licensed practical nurse at Mediplex in Wethersfield, Connecticut. (Dept. Exh. 9; Transcript, August 18, 1999, p. 3)
3. During January 1998, respondent was diagnosed with a medical condition which required treatment with interferon injections. Respondent experienced side effects of the injections which required respondent to be prescribed pain medications. (Dept. Exh. 9; Transcript, August 18, 1999, pp. 16-17)
4. At or around October and November 1998, while working as a licensed practical nurse at Mediplex, respondent diverted the controlled substances Tylenol #3, Dilaudid and Percocet. Respondent used the controlled substances he diverted to ease the pain associated with the interferon injections. (Dept. Exh. 9; Transcript, August 18, 1999, pp. 17-18)
5. Respondent accomplished the diversion of controlled substances from Mediplex by failing to completely, properly, and accurately document medical or hospital records and by falsifying one or more controlled substance receipt records. (Dept. Exh. 9; Transcript, August 18, 1999, p. 9)

6. Respondent used the controlled substances he diverted prior to reporting to work and also while on duty as a licensed practical nurse. Respondent testified that his use of controlled substances impaired his judgment as a nurse. (Transcript. August 18, 1999, pp. 22-23)

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered:

William Harrington held a valid Licensed Practical Nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges sufficiently provided legal notice as mandated by the General Statutes of Connecticut §4-177(a) and (b), and §4-182(c). The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut as well as §19a-9-1 through §19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by the General Statutes of Connecticut §4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

PARAGRAPH 3 of the Statement of Charges alleges that at or around October and November 1998, while working as a registered nurse at Mediplex, respondent:

- a. diverted Dilaudid and Percocet;
- b. failed to completely, properly and accurately document medical or hospital records; and/or,
- c. falsified one or more Controlled Substance Receipt Records.

PARAGRAPH 4 of the Statement of Charges alleges that at or around October and November 1998, respondent abused or utilized to excess Dilaudid and Percocet.

PARAGRAPH 5 of the Statement of Charges alleges that respondent's abuse of Dilaudid and Percocet does, and/or may, affect his practice as a licensed practical nurse.

Respondent admits these charges. (Transcript., August 18, 1999 p. 9)

The General Statutes of Connecticut §20-99 provides in relevant part:

(a) The Board of Examiners for Nursing shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the nursing profession brought against persons licensed to practice nursing. After holding a hearing. . . said board, if it finds such person to be guilty, may revoke or suspend his or her license or take any of the actions set forth in section 19a-17 . . . (b) Conduct which fails to conform to the accepted standards of the nursing profession includes, but is not limited to, the following: . . . (2) illegal conduct, incompetence or negligence in performing usual nursing functions . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals. . . .

Based on its findings and respondent's admissions, the Board concludes that respondent's conduct as alleged in Paragraphs 3, 4, and 5 of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes violations of the General Statutes of Connecticut §20-99(b)(2) and (5). Therefore, respondent's licensed practical nurse license is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

Order

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders the following:

1. That the suspension of respondent's licensed practical nurse license 025942, pursuant to the Interim Consent Order dated June 2, 1999, shall be vacated on the effective date of this Memorandum of Decision.
2. That respondent's licensed practical nurse license 025942, is placed on probation for a period of four (4) years based upon the Board's findings of Paragraphs 3, 4, and 5 of the Statement of Charges.
3. If any of the following conditions of probation are not met, respondent's licensed practical nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. During the period of probation the Board shall pre-approve respondent's employment or change of employment within the nursing profession. Respondent shall not be employed as a nurse in a home care setting.

- B. Respondent shall provide a copy of this Memorandum of Decision to any and all employers if employed as a nurse during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the commencement of employment, as to receipt of a copy of this Memorandum of Decision.
- C. Respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties during the first year of working as a nurse during the probationary period.
- D. If employed as a nurse, respondent shall cause monthly employer reports to be submitted to the Board by his immediate supervisor during the entire probationary period. Employer reports shall commence thirty (30) after respondent's employment as a nurse.
- E. The employer reports cited in Paragraph D above shall include documentation of respondent's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph P below.
- F. Should respondent's employment as a nurse be involuntarily terminated, respondent and/or his employer shall notify the Board, within seventy-two (72) hours, of such termination.
- G. At his expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist during the entire four year period of probation.
- H. Respondent shall provide a copy of this Memorandum of Decision to his therapist. The Board shall be notified in writing by his therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.
- I. Respondent shall cause monthly evaluation reports to be submitted to the Board by his therapist during the entire probationary period. Therapist reports are due commencing with the report due on the first business day of November 1999.

- J. The therapist reports cited in Paragraph I above shall include documentation of dates of treatment, and an evaluation of respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph P below.
- K. At his expense, respondent shall be responsible for submitting to random chain of custody urine and/or blood screens for alcohol and drugs for the entire probationary period, as ordered by his therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board of Examiners for Nursing to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that chain of custody procedures must be followed throughout the screening process. Respondent shall be responsible for immediately notifying the laboratory, his therapist and/or personal physician and the Board of Examiners for Nursing of any drug(s) he is taking.

There must be at least one (1) such random alcohol/drug screen weekly during the first , second and fourth years of the probationary period, and at least two (2) such random alcohol/drug screens monthly during the third year of the probationary period.

Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

Random alcohol/drug screens must include testing for the following substances:

Amphetamines	Methadone
Barbiturates	Methaqualone
Benzodiazepines	Opiates (Metabolites)
Cannabinoids (THC Metabolites)	Phencyclidine (PCP)
Cocaine	Propoxyphene
Meperidine (Demerol)	Ethanol (alcohol)

Reports of random alcohol and drug screens shall be submitted directly to the Board, at the address cited in Paragraph P below, by respondent's therapist, personal physician or the testing laboratory.

- L. Respondent shall not obtain for personal use and/or use alcohol or any drug(s) that has not been prescribed for him, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drug(s) that are prescribed for a legitimate medical purpose.
- M. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.
- N. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of employment.
- O. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of address.
- P. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P. O. Box 340308
Hartford CT 06134-0308

- 4. Any deviation from the terms of probation, without prior written approval by the Board of Examiners for Nursing, shall constitute a violation of probation which will be cause for an immediate hearing on charges of violating this Order. Any finding that respondent has violated this Order will subject respondent to sanctions under §19a-17(a) and (c) of the General Statutes

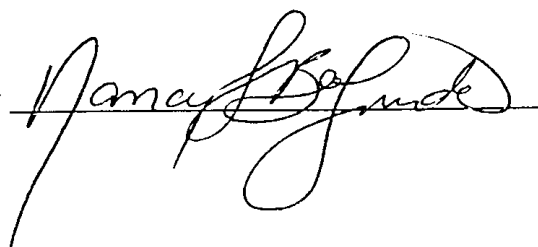
of Connecticut, including but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board of Examiners for Nursing shall not be a waiver or preclude the Board's right to take subsequent action. The Board of Examiners for Nursing shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to respondent's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department of Public Health or the Board of Examiners for Nursing).

5. This Memorandum of Decision becomes effective, and the four (4) year probation of respondent's licensed practical nurse license shall commence, on November 1, 1999.

The Board of Examiners for Nursing hereby informs respondent, William Harrington, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 20th day of October, 1999.

BOARD OF EXAMINERS FOR NURSING

By 

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 21st day of October 1999, by certified mail, return receipt requested to:

William Harrington
356 Windham Avenue
Colchester, CT 06415

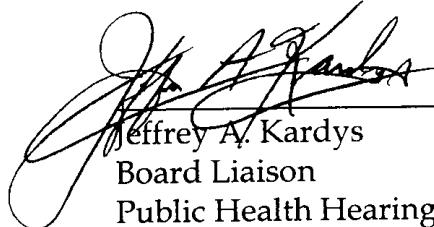
Certified Mail RRR #Z320231521

Joseph Courtney, Esq.
Flaherty, Meisler & Courtney
30 Lafayette Square
Vernon, CT 06066

Certified Mail RRR #Z320231522

and by Inter-Departmental Mail to:

Leslie Scoville, Staff Attorney
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Board Liaison
Public Health Hearing Office